

REMARKS

The Examiner has finally rejected Claims 1-11, 17-24, 27-33, and 39-45 under 35 U.S.C. § 102(b) as being anticipated by European Patent Application EP 0 562 864 to Rosenthal et al. ("Rosenthal '864"). Claims 12-16 and 34-38, were rejected over the Rosenthal '864, and Claims 25 and 26, were rejected over Rosenthal '864 in view of the abstract of Japanese Patent Publication No. 05-163424 to Suzuki et al.

Each of the independent claims, i.e., 1, 2, 25, 40, through 45 have been amended to emphasize the patentable features of the present invention. More particularly, each independent claim now has language describing a biocompatible envelope with exterior walls formed from a microporous film, said envelope having an interior hollow delimited by the exterior walls, said envelope enclosing said carrier/active agent combination within said hollow. The purpose of this amendment to the independent claims is to recite more clearly the structure shown in Figs. 2, 3, and 4 of the application, and to make clear that the basic configuration of the invention is a mass of carrier/active agent contained within the hollow of an envelope formed from a microporous film. This is a different configuration than that shown in the primary reference.

In contrast to the teaching of the present Application, Rosenthal '864 teaches a bioabsorbable sponge implant which has inclusions, i.e., "substructures in the sponge matrix" The substructures may include bioabsorbable films or film fragments but these are embedded within the sponge matrix. As claimed in the amended claims

the microporous film of the present invention is used to form the walls of an envelope for enclosing the carrier/active agent combination, rather than using the film as an inclusion embedded in a sponge matrix.

While each of the amended independent claims have the foregoing patentably distinct features, various amended independent claims have additional features which distinguish over the prior art. For example, Claim 2 specifies that the exterior walls of the envelope include a "pair of substantially planar, parallel, opposed walls", e.g., as illustrated in Figs. 2 through 4 of the present application, but which are not found in the Rosenthal reference.

Claim 25 has been amended to include the features of the envelope as described above, but also include additional features which distinguish over the prior art, namely that the film from which the envelope is made has the composition of polyethylene or polypropylene, mixtures thereof and copolymers of the constituent monomers thereof. As the Examiner noted in the first Office Action, Rosenthal '864, which relates to a biodegradable product, does not include any reference to these non-biodegradable compounds. The Examiner originally found the inventions stated in Claim 25 to recite patentable subject matter. In a later Office Action, the Examiner proposed that Rosenthal '864 be combined with the Suzuki reference. Suzuki proposes a biodegradable compound formed from blending a biodegradable thermoplastic polymer or a photodegradable polymer, e.g., polypropylene with polycaprolactone. Suzuki properly notes that polypropylene is not biodegradable, but is instead

photodegradable, and is made biodegradable by mixing with a polycaprolactone in accordance with a specific methodology. The present application does not suggest combining polypropylene with polycaprolactone, but rather proposes using polyethylene or polypropylene by themselves, and/or mixtures of those two compositions and copolymers of the constituent polymers thereof - none of which are polycaprolactone and none of which would result in a biodegradable composition. It is not known whether the product resulting from the proposed combination of Suzuki and Rosenthal would be suitable for inclusion in the body, i.e., would be biocompatible and biodegradable and would be compatible with the medicaments and use within the body taught by Rosenthal. Regardless whether Suzuki and Rosenthal could be combined to produce a biocompatible biodegradable dressing, the resultant combination would not anticipate or make obvious the invention as stated in Claim 25, which specifies a film which is not biodegradable. This type of product typified by Claim 25 would be utilized, for example, as a topical dressing, which would be removed after use rather than incorporated into the body, as proposed by Rosenthal. In addition, the proposed combination also fails in that Suzuki does not remedy Rosenthal relative to the claimed envelope structure described above.

Claim 40 describes a four layer variant of the present invention having "a carrier layer disposed on said outwardly directed surface exterior to said hollow". Claim 41 has a similar recitation and in addition describes the exterior walls as including a "pair of substantially planar, parallel, opposed walls upon which the carrier layer is

disposed". Claim 42 describes the envelope having exterior walls with a pair of substantially parallel opposed walls and "a carrier layer disposed on an outwardly facing surface of said walls". This therefore describes a five layer embodiment as shown, e.g., in Fig. 3 of the present application. Claim 43 has been amended to state that the envelope is non-biodegradable. It is respectfully submitted that neither the primary nor secondary reference has the features recited in the amended claims, and therefore the amended independent claims should be allowable.

The dependent claims have been amended to make them consistent with the amendments to the independent claims and also to emphasize additional features of the present invention. For example, Claim 3 has been amended to describe "said opposed walls being conjoined at respective peripheral edges thereof to form said envelope". This further emphasizes the structural differences of the present invention, for example as shown in Fig. 2, from the sponge construction of Rosenthal. Claims 11 and 12 have been amended to recite that the film is nonbiodegradable, once again harkening back to the difference between the present invention and the proposed combination of Rosenthal and Suzuki. Claim 12 specifies that the polymer from which the walls are made is selected from the group consisting of polyethelene, polypropylene, etc.

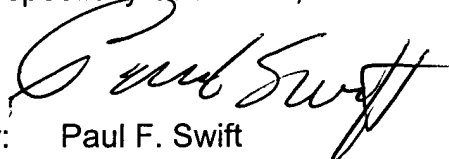
For the reasons stated above, Applicant believes that all claims as amended are now in condition for allowance. If the Examiner believes that there are additional issues to be addressed that may be resolved through a telephone interview,

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the Examiner is requested to contact Applicant's attorney at the telephone number provided below.

This Amendment is accompanied by an RCE and authorization to charge same to Deposit Account No. 501402. If any additional fees are due the Examiner is hereby authorized to charge such fees to Deposit Account No. 501402.

Respectfully Submitted,


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